

106TH CONGRESS  
2D SESSION

# S. 2094

To amend the Energy Policy and Conservation Act to ensure that petroleum importers, refiners, and wholesalers accumulate minimally adequate supplies of home heating oil to meet reasonably foreseeable needs in the northeastern States.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 24, 2000

Mr. KENNEDY introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

To amend the Energy Policy and Conservation Act to ensure that petroleum importers, refiners, and wholesalers accumulate minimally adequate supplies of home heating oil to meet reasonably foreseeable needs in the northeastern States.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Stable Oil Supply  
5       (SOS) Home Heating Act”.

6       **SEC. 2. FINDINGS AND PURPOSE.**

7       (a) FINDINGS.—Congress finds that—

1           (1) more than 35 percent of families in the  
2           northeastern United States depend on oil to heat  
3           their homes each winter, and most of those families  
4           have no practical alternative to paying the going  
5           price for heating oil or seeking public or private as-  
6           sistance to pay for heating oil;

7           (2) consumers experienced sudden and dramatic  
8           increases in prices for home heating oil during the  
9           winters of 1989, 1996, and 1999, causing hardship  
10          to families and other people of the United States, in-  
11          cluding people on fixed and low incomes, people liv-  
12          ing in rural areas, the elderly, farmers, truckers and  
13          the driving public, and governments that pay home  
14          heating oil bills;

15          (3) a substantial part of each sudden increase  
16          in home heating oil prices has been caused by vastly  
17          inadequate supplies of home heating oil accumulated  
18          during the summer, fall, and winter months by im-  
19          porters, refiners, and wholesalers; and

20          (4) increased stability in home heating oil prices  
21          is necessary to maintain the economic vitality of the  
22          Northeast.

23          (b) PURPOSE.—The purpose of this Act is to ensure  
24          that minimally adequate stocks of home heating oil are  
25          accumulated in the Northeast to meet reasonably foresee-

1 able demand during each winter while protecting con-  
 2 sumers from sudden increases in the price of home heating  
 3 oil.

4 **SEC. 3. DEFINITIONS.**

5 Section 152 of the Energy Policy and Conservation  
 6 Act (15 U.S.C. 6232) is amended—

7 (1) by redesignating paragraphs (2), (3), (4),  
 8 (5), (6), (7), (8), (9), (10), and (11) as paragraphs  
 9 (3), (4), (5), (8), (9), (10), (11), (12), (13), and  
 10 (14);

11 (2) by inserting after paragraph (1) the fol-  
 12 lowing:

13 “(2) HOME HEATING OIL.—

14 “(A) IN GENERAL.—The term ‘home heat-  
 15 ing oil’ means distillate fuel oil.

16 “(B) INCLUSIONS.—The term ‘home heat-  
 17 ing oil’ includes No. 1 and No. 2 diesel and fuel  
 18 oils.”;

19 (3) by inserting after paragraph (5) (as redesign-  
 20 nated by paragraph (1)) the following:

21 “(6) NORTHEAST.—The term ‘Northeast’  
 22 means the States of Maine, New Hampshire,  
 23 Vermont, Massachusetts, Rhode Island, Connecticut,  
 24 New York, Pennsylvania, and New Jersey.

25 “(7) PRIMARY HEATING OIL INVENTORY.—

1           “(A) IN GENERAL.—The term ‘primary  
2           heating oil inventory’ means a heating oil inven-  
3           tory held by an importer, refiner, or wholesaler.

4           “(B) EXCLUSION.—The term ‘primary  
5           heating oil inventory’ does not include any in-  
6           ventory held by a retailer for the direct sale to  
7           an end user of home heating oil.”; and

8           (4) by adding at the end the following:

9           “(15) WHOLESALER.—The term ‘wholesaler’  
10          means any person that—

11           “(A) owns, operates, leases, or otherwise  
12           controls a bulk terminal having a total petro-  
13           leum storage capacity of 50,000 barrels or  
14           more;

15           “(B) stores home heating oil; and

16           “(C)(i) resells petroleum products to retail  
17           businesses that market the petroleum products  
18           to end users; or

19           “(ii) receives petroleum products by tank-  
20           er, barge, or pipeline.

21           “(16) WINTER SEASON.—The term ‘winter sea-  
22           son’ means the months of November through  
23           March.”.

1 **SEC. 4. HOME HEATING OIL RESERVE FOR THE NORTH-**  
2 **EAST.**

3 Part B of the Energy Policy and Conservation Act  
4 (15 U.S.C. 6231 et seq.) is amended by inserting after  
5 section 157 the following:

6 **“SEC. 157A. VOLUNTARY PLANS FOR HOME HEATING OIL**  
7 **RESERVE.**

8 “(a) SUBMISSION AND DEVELOPMENT OF VOL-  
9 UNTARY PLANS.—Importers, refiners, and wholesalers  
10 that hold primary heating oil inventories for sale to mar-  
11 kets in the Northeast, acting individually or in 1 or more  
12 groups, should, for the purposes of ensuring stability in  
13 energy fuel markets and protecting consumers from dra-  
14 matic swings in price—

15 “(1) develop voluntary plans, in consultation  
16 with interested individuals from nonprofit organiza-  
17 tions and the public and private sectors, to maintain  
18 readily available minimum product inventories of  
19 heating oil in the Northeast, possibly in combination  
20 with the hedging of future inventories, to mitigate  
21 the risk of severe price increases to consumers and  
22 to reduce adverse impacts on the regional and na-  
23 tional economies; and

24 “(2) submit the voluntary plans to the Sec-  
25 retary not later than 180 days after the date of en-  
26 actment of this section.

1 “(b) CERTIFICATION AND REPORT.—

2 “(1) IN GENERAL.—If the Secretary determines  
3 that a plan submitted under subsection (a)—

4 “(A) is likely to achieve the purposes of  
5 this Act, the Secretary shall so certify, and the  
6 importer, refiner, or wholesaler shall implement  
7 the plan; or

8 “(B) is not likely to achieve the purposes  
9 of this section, the Secretary shall issue a state-  
10 ment explaining why the plan does not appear  
11 likely to achieve those purposes.

12 “(2) REPORT.—Not later than 240 days after  
13 the date of enactment of this section, the Secretary  
14 shall submit to Congress a report describing the  
15 findings and reasons for a certification or failure to  
16 certify a plan under this subsection.

17 “(c) DEFENSE TO ANTITRUST ACTIONS.—

18 “(1) IN GENERAL.—There shall be available as  
19 a defense to a civil or criminal action brought under  
20 the antitrust laws (or any similar State law) with re-  
21 spect to an action taken to develop and carry out a  
22 voluntary plan under subsection (a) by an importer,  
23 refiner, or wholesaler the fact that—

24 “(A) the action is taken—

1 “(i) in the course of developing the  
2 voluntary plan; and

3 “(ii) in the course of carrying out the  
4 voluntary plan, if the voluntary plan is cer-  
5 tified by the Secretary under subsection  
6 (b);

7 “(B) the action is not taken for the pur-  
8 pose of injuring competition; and

9 “(C) the importer, refiner, or wholesaler is  
10 in compliance with this section.

11 “(2) LIMITATION.—Except in the case of an ac-  
12 tion taken to develop a voluntary plan, the defense  
13 provided in paragraph (1) shall be available only if  
14 the person asserting the defense demonstrates that  
15 the action was specified in, or within the reasonable  
16 contemplation of, a voluntary plan certified by the  
17 Secretary.

18 “(3) BURDEN OF PROOF.—A person inter-  
19 posing the defense under paragraph (1) shall have  
20 the burden of proof, except that the burden shall be  
21 on the person against which the defense is asserted  
22 with respect to whether an action is taken for the  
23 purpose of injuring competition.

24 “(d) REPORT.—Not later than 1 year after the date  
25 of enactment of this section, and annually thereafter, the

1 Secretary shall submit to Congress a report describing the  
 2 results of the implementation of all voluntary plans cer-  
 3 tified under this section, including specific compliance by  
 4 importers, refiners, and wholesalers that serve the North-  
 5 east market with respect to the adequacy of the home  
 6 heating oil supply.

7 “(e) PLAN ADOPTED BY SECRETARY.—If, by the  
 8 date that is 240 days after the date of enactment of this  
 9 section, for each importer, refiner, and wholesaler in the  
 10 Northeast, a certified plan is not implemented in accord-  
 11 ance with subsection (b), the Secretary shall adopt and  
 12 implement a plan in accordance with section 157B.

13 **“SEC. 157B. HOME HEATING OIL RESERVE FOR THE NORTH-**  
 14 **EAST.**

15 “(a) ESTABLISHMENT OF PRIVATE HOME HEATING  
 16 OIL RESERVES.—If a certified plan described in section  
 17 157A is not implemented in accordance with that section  
 18 for each importer, refiner, and wholesaler that stores home  
 19 heating oil for sale in the Northeast, not later than 300  
 20 days after the date of enactment of this section, the Sec-  
 21 retary shall establish a private home heating oil reserve  
 22 for the Northeast in accordance with this section.

23 “(b) INVENTORY.—

24 “(1) IN GENERAL.—Except as provided in para-  
 25 graph (2), the Secretary shall periodically monitor

1 supply levels as necessary to ensure that each im-  
2 porter, refiner, and wholesaler of home heating oil  
3 that stores home heating oil for sale in the North-  
4 east shall have in inventory and readily available to  
5 refiners in the Northeast a quantity of home heating  
6 oil that the Secretary determines is equal to the  
7 quantity that each importer, refiner, or wholesaler  
8 may reasonably be expected to require to supply the  
9 needs of its customers during the present or fol-  
10 lowing winter season without subjecting consumers  
11 to sudden price increases that are due in part to  
12 inadequate buildup of heating oil inventories.

13 “(2) LIMITATION.—The Secretary shall not re-  
14 quire any importer, refiner, or wholesaler to store  
15 any product under paragraph (1) in a quantity  
16 greater than 95 percent of the average storage ca-  
17 pacity for home heating oil reasonably available to  
18 the importer, refiner, or wholesaler during the pre-  
19 ceding 2 years.

20 “(3) INCREASED INVENTORY.—If the Secretary  
21 determines that an inventory of home heating oil  
22 does not meet the requirement of under paragraph  
23 (1), the Secretary may direct an importer, refiner, or  
24 wholesaler to acquire, store, and maintain in readily  
25 available inventories any quantity of home heating

1 oil that the Secretary determines to be necessary to  
2 supply heating oil needs in the Northeast without  
3 subjecting consumers to sudden price increases that  
4 are due in part to inadequate buildup of heating oil  
5 inventories.

6 “(4) REGULATIONS.—As soon as practicable  
7 after the date of enactment of this section, the Sec-  
8 retary shall promulgate regulations necessary to  
9 carry out this section, including regulations that—

10 “(A) authorize civil penalties to enforce  
11 this section; and

12 “(B) provide that the Secretary shall co-  
13 operate with State energy authorities in car-  
14 rying out this section.

15 “(c) EXCESS INVENTORY.—At the end of each winter  
16 season, the Administrator of the Environmental Protec-  
17 tion Agency shall take appropriate and reasonable action  
18 to enable importers, refiners, and wholesalers of home  
19 heating oil to sell any remaining excess inventories of heat-  
20 ing oil that the importers, refiners, and wholesalers may  
21 have.

22 “(d) IMPLEMENTATION.—In implementing this sec-  
23 tion, the Secretary shall ensure, to the maximum extent  
24 practicable, that the manner of implementation supports

1 the maintenance of an economically sound and competitive  
2 petroleum industry.

3 “(e) REPORT.—Not later than 1 year after the imple-  
4 mentation of a plan under this section, the Secretary shall  
5 submit to Congress a report describing the results of the  
6 implementation of the plan, including specific compliance  
7 by importers, refiners, and wholesalers in the Northeast  
8 with respect to home heating oil supply buildup.”.

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